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Insurance--Aeroplane Accident--Passenger Not "Participating in Aeronautics" (Martin v. Mutual Life Insurance Co., 71 S.W.2d 694 (Ark. 1934))

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edge or opportunity for observation of the fact which he relates.¹³ A declaration must be rejected when it would be impossible for the declarant to have had any adequate source of knowledge of his assailant.¹⁴ To permit a conviction to stand where no motive was shown for the act, and no evidence corroborating the dying declaration was offered, would shock one's sense of justice.¹⁵

J. J. G.

INSURANCE—AEROPLANE ACCIDENT—PASSENGER NOT "PARTICIPATING IN AERONAUTICS."—The life of George W. Martin was insured by the defendant company. The policy, in which plaintiff was named as beneficiary, contained a *double indemnity clause* by force of which, double indemnity would be payable upon receipt of due proof that the insured died as a result of bodily injury effected solely through external, violent and accidental means—provided that the double indemnity shall *not* be payable if death resulted—from "participating in aeronautics." The insurance having been in force for more than two years the liability of defendant was conceded as to single indemnity. The insured was invited by one Gregory, an aeroplane pilot, to accompany him as a guest on a pleasure flight. While in flight on this trip the aeroplane accidentally crashed, killing the insured instantly. The insured had no knowledge of aviation and did not, before said accident, use aeroplanes as a means of transportation. *Held*, a person riding in an aeroplane as an invited guest is not "participating in aeronautics" within the exclusions of the double indemnity clause of the above mentioned policy. *Martin v. Mutual Life Insurance Co.*, 189 Ark. —, 71 S. W. (2d) 694 (1934).

In reaching this decision the court in construing the meaning of "participating in aeronautics" refused to be bound by the connotation given by those learned in the niceties of language and accustomed to its precise use, but rather considered that meaning which the majority of the thousands of persons who seek insurance would understand by the term and considered it as the equivalent to "engaged in aeronautics." Words and phrases used in insurance policies should be construed by their meaning as used in the ordinary speech of the people and not as understood by scholars¹ unless an artificial or technical meaning was intended to express the mutual

¹³ Walker v. State, 39 Ark. 225 (1882); Jones v. State, 52 Ark. 347, 12 S. W. 704 (1889).

¹⁴ State v. Wilks, 278 Mo. 481, 213 S. W. 118 (1919); State v. Williams, 67 N. C. 12 (1872).

¹⁵ State v. Phillips, 118 Ia. 660, 92 N. W. 876 (1902); People v. White, 251 Ill. 67, 93 N. E. 1036 (1911).

¹ Missouri State Life Insurance Co. v. Martin, 188 Ark. 907, 69 S. W. (2d) 1081 (1934). See, U. S. Mutual Accident Ass'n v. Barry, 131 U. S. 100, 9 Sup.

understanding of the parties.² It is a just rule of construction that all doubt or ambiguity as to the meaning of an insurance policy is resolved against the insurer for the reason that the language expressing or limiting the liability insured against is carefully chosen by the insurer,³ who had full power and opportunity to exempt itself from liability beyond cavil had it elected so to do. "Engaged in aeronautics" was held to give the impression of participation as an occupation,⁴ which connotes actual employment and not merely riding as a passenger in a plane.⁵ It also denotes action,⁶ which in turn signifies "to take part in"—one of the meanings of the word "participate." This participation may consist in actual *piloting of the plane or control thereof* by the insured, as where the insured owned the plane and although he did not actually pilot the plane himself, he directed the pilot when a flight should be made.⁷ Here the court held that one who interposes and enforces his judgment in matters so vital as these to the flight of an aeroplane is participating in aeronautic operations. On the other hand, "participate" does not connote to the average person the meaning that his mere presence in a plane as an invited guest upon one isolated trip by aeroplane is sufficient participation or engagement in the art of aviation so as to exempt the insurer from double liability⁸ upon the accidental death of the insured resulting therefrom.

H. H. H.

Ct. 755 (1889); *Lewis v. Iowa State Trav. Men's Ass'n*, 248 Fed. 602 (1918); *Hewitt Pharmacies v. Aetna Life Ins. Co.*, 148 Misc. 663, 266 N. Y. Supp. 290 (1933), *aff'd*, 241 App. Div. 781, 270 N. Y. Supp. 1009 (3d Dept. 1934).

² Example: F. P. A. E. C.—which means free of particular average, English conditions. These words signify nothing to the layman, but they have a definite and fixed meaning as understood by the parties to a marine insurance contract, having become words of art by usage and interpretation. *Thames & Mersey Marine Ins. Co., Ltd. v. Pacific Creosoting Co.*, 223 Fed. 561 (C. C. A. 9th, 1915); *London Assurance Co. v. Companhia De Moagens Do Barreiro*, 167 U. S. 149, 42 L. ed. 113 (1897); *Devitt v. Providence Washington Ins. Co.*, 61 App. Div. 390, 70 N. Y. Supp. 654 (2d Dept. 1901), *aff'd*, 173 N. Y. 17, 65 N. E. 777 (1902). For the history of the warranty of F. P. A. E. C. see GOW, *MARINE INSURANCE* (4th ed.) 183-187. Also, ARNOLD, *MARINE INSURANCE* (11th ed.) §§884-891, 901.

³ *Gerka v. Fidelity & Casualty Co. of N. Y.*, 251 N. Y. 51, 167 N. E. 169 (1929); *Killian v. Metropolitan Life Ins. Co.*, 251 N. Y. 44, 166 N. E. 798, (1929); *Silverstein v. Commercial Casualty Ins. Co.*, 237 N. Y. 391, 143 N. E. 231 (1924); *Bushey & Sons v. American Ins. Co.*, 237 N. Y. 24, 142 N. E. 340 (1923); *Arico v. Prudential Ins. Co. of America*, 241 App. Div. 826, 271 N. Y. Supp. 241 (2d Dept. 1934); *Travelers' Protective Ass'n v. Stephens*, 185 Ark. 660, 49 S. W. (2d) 364 (1932).

⁴ *Peters v. Prudential Ins. Co.*, 133 Misc. 780, 233 N. Y. Supp. 500 (1929).

⁵ *Benefit Ass'n v. Hayden*, 175 Ark. 565, 299 S. W. 995 (1927).

⁶ *Benham v. Amer. Cent. Life Ins. Co.*, 140 Ark. 612, 217 S. W. 462, 463 (1919).

⁷ *First Nat. Bank v. Phoenix Mut. Life Ins. Co.*, 62 F. (2d) 681 (1933).

⁸ *Missouri State Life Ins. Co. v. Martin*, *supra* note 1.